

2001 ASSEMBLY BILL 571

1 **AN ACT** *to amend* 45.53 (title); and *to create* 21.75 of the statutes; **relating to:**
2 the rights of persons who are called into active state service and providing
3 penalties.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 21.75 of the statutes is created to read:

5 **21.75 Soldiers' and sailors' relief act; state service. (1) DEFINITIONS.** In
6 this section:

7 (a) "Active state service" means active service for 30 days or more in the
8 national guard or the state defense force under an order of the governor issued under
9 this chapter or active service for 30 days or more in the national guard under 32 USC
10 502 (f) or 506 that is not considered to be "service in the uniformed services," as
11 defined in 38 USC 4303 (13).

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1 (b) “Court” means a court of record.

2 (c) “Department” means the department of military affairs.

3 (d) “Service member” means a person who may be called into active state
4 service.

5 (e) “Period of active state service” means the period beginning on the date on
6 which the service member receives an order to enter active state service and ending
7 on the date of the service member’s release from active state service or death while
8 in active state service.

9 **(2) PROTECTION OF PERSONS SECONDARILY LIABLE.** (a) If this section results in the
10 stay or suspension of any obligation, liability, court action, order, writ, or judgment,
11 the court that issued the stay or suspension may grant the same remedy to sureties,
12 guarantors, endorsers, and others subject to the obligation, liability, court action,
13 order, writ, or judgment.

14 (b) If a service member is the principal on a criminal bail bond and his or her
15 active state service causes the surety upon the bond to be prevented from enforcing
16 the attendance of the service member at court, the court shall not enforce the
17 provisions of the bond during the service member’s period of active state service and
18 may either during or after the period of active service discharge the surety and
19 exonerate the bail.

20 (c) A surety, guarantor, endorser, or other person subject to the obligation,
21 liability, court action, order, writ, or judgment under par. (a) or (b) may waive in
22 writing the rights afforded by this subsection, except that the waiver is not valid
23 unless the waiver is executed as an instrument separate from the obligation, liability,
24 court action, order, writ, or judgment. The waiver under this paragraph is not valid
25 after the beginning of the period of active state service if executed by a service

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1 member who subsequently is called into active state service. The waiver under this
2 paragraph is not valid if executed by a dependent of a service member unless the
3 waiver is executed during the period of active state service.

4 **(3) EFFECT ON RIGHTS UNDER A WRITTEN AGREEMENT.** This section does not prevent
5 the modification, termination, or cancelation of any contract, lease, bailment, or
6 secured obligation, or the repossession, retention, foreclosure, sale, or forfeiture of
7 property that is security for any obligation or which has been purchased or received
8 under a contract, lease, or bailment under a written agreement of the parties if that
9 agreement is executed during or after the period of active state service.

10 **(4) EXERCISE OF RIGHTS.** No person may use the fact that a service member has
11 applied for, or received, a stay, postponement, or suspension in the payment of a tax,
12 fine, penalty, insurance premium, or other civil obligation or liability as the basis for
13 doing any of the following:

14 (a) If the person is a lender, determining that the service member is unable to
15 pay any such civil obligation or liability in accordance with the terms of the obligation
16 or liability.

17 (b) If the person is a creditor, denying or revoking any credit extended to the
18 service member, changing the terms of a credit agreement to which the service
19 member is a party, or refusing to grant credit to the service member in substantially
20 the amount or on substantially the terms requested by the service member.

21 (c) If the person is in the business of assembling or evaluating consumer credit
22 information, making an adverse report on the creditworthiness of the service
23 member.

24 (d) If the person is an insurer, refusing to insure the service member.

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1 **(5) DEFAULT JUDGMENTS, AFFIDAVITS, AND ATTORNEY REPRESENTATION.** (a) If, in any
2 court action, there is a default of any appearance of the defendant, the plaintiff, when
3 requesting a default judgment, shall file with the court an affidavit setting forth facts
4 showing that the defendant is not in active state service. If the plaintiff is unable to
5 file such an affidavit, the plaintiff shall, when requesting a default judgment, file an
6 affidavit setting forth that the defendant is in active state service or that the plaintiff
7 is unable to determine if the defendant is in active state service. If an affidavit is not
8 filed showing that the defendant is not in active state service, a default judgment
9 may not be entered without a court order. A court may not order the entry of a default
10 judgment if the defendant is in active state service until the court has appointed an
11 attorney to represent the defendant and protect the defendant's interests. Unless
12 the court determines that the defendant is not in active state service, the court may
13 require, as a condition of entering judgment, the plaintiff to file a bond to indemnify
14 the defendant, if he or she is in active state service, against any loss or damage
15 resulting from the judgment if any part of the judgment is later set aside. The court
16 may make any other order as may be necessary to protect the interests of the
17 defendant under this section.

18 (b) If a judgment is rendered in a court action against a service member during
19 the period of active state service or within 30 days after the end of that period of active
20 state service, and it appears that the service member was prejudiced in making a
21 defense by reason of his or her active state service, the court may reopen that
22 judgment if all of the following conditions exist:

23 1. The service member moves the court to reopen the judgment within 90 days
24 after his or her period of active state service ends.

25 2. The service member has a meritorious or legal defense to the action.

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1 (c) Vacating, setting aside, or reversing a judgment under this subsection does
2 not impair any right or title acquired by a bona fide purchaser for value under the
3 judgment.

4 (d) Any person who shall make or use an affidavit required under this
5 subsection that he or she knows to be false shall be fined not more than \$10,000 or
6 imprisoned for not more than 9 months or both.

7 **(6) STAY OF ACTION.** During any stage of a court action in which a service
8 member in active state service is involved as a party, or within 60 days after the end
9 of the period of active state service, the court in which the action is pending may on
10 its own motion, and shall, on application of the service member or some person acting
11 on behalf of the service member, stay the action unless the court determines that the
12 service member's ability to represent his or her interest in the action is not materially
13 affected by reason of his or her active state service.

14 **(7) STAY OR VACATION OF EXECUTIONS OR ATTACHMENTS.** In any court action that
15 is commenced against a service member before or after entering active state service,
16 or within 60 days after the period of active state service ends, the court may on its
17 own motion, and shall, on application of the service member or some person acting
18 on behalf of the service member, stay the execution of any judgment or order entered
19 against the service member, or stay or vacate any attachment or garnishment
20 regarding the service member's property, unless the court determines that the
21 service member's ability to comply with the judgment or order is not materially
22 affected by reason of his or her active state service.

23 **(8) DURATION AND TERMS OF STAYS.** (a) Any stay of any action, attachment,
24 execution, or garnishment under this section may be ordered for the period of the

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1 active state service and 3 months after that period has ended, or for any part of that
2 time.

3 (b) Any stay under par. (a) may be subject to such terms as may be just,
4 including the payment of installments in an amount and at the times that the court
5 determines.

6 (c) If the service member is a codefendant in an action, the plaintiff may, by
7 leave of the court, proceed against the other codefendants.

8 **(9) STATUTES OF LIMITATIONS.** The period of active state service may not be
9 included in computing any period for the bringing of any action or proceeding in any
10 court or before any public agency, as defined in s. 36.54 (2) (a) 2., by or against a
11 person in active state service or by or against his or her heirs, executors,
12 administrators or assigns, whether the cause of action or proceeding or the right to
13 bring the action or proceeding accrued before or during the period of active state
14 service.

15 **(10) MAXIMUM INTEREST RATE.** No obligation or liability bearing interest at a rate
16 in excess of 6% per year incurred by a service member in active state service before
17 his or her entry into that service may, during any part of the period of active state
18 service, bear interest in excess of 6% per year except by court order. If, upon
19 application by an obligee, a court determines that the ability of the service member
20 to pay interest upon the obligation or liability at a rate in excess of 6% per year is not
21 materially affected by reason of his or her active state service, the court may make
22 any order that is just. In this subsection, “interest” includes service charges, renewal
23 charges, fees, or other charges, other than insurance, in respect to the obligation or
24 liability.

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1 **(11) EVICTION STAY.** (a) No eviction may be made during the period of active
2 state service in respect to any premises for which the agreed rent does not exceed
3 \$1,200 per month, occupied chiefly for dwelling purposes by the spouse, children, or
4 other dependents of a service member who is in active state service, except upon
5 order of a court in an action affecting the right of possession.

6 (b) In an action for eviction under par. (a), the court may on its own motion, and
7 shall, on application of the service member or some person acting on behalf of the
8 service member, stay the proceedings for not longer than 3 months unless the court
9 determines that the ability of the tenant to pay the agreed rent is not materially
10 affected by the active state service. The court may make any other order in the
11 eviction action as it considers necessary and just. If a stay or order is issued under
12 this paragraph, the court may, upon the request of the owner of the premises, make
13 any other order as may be applicable to conserve the interests of all of the parties.

14 (c) Any person who knowingly takes part in any eviction prohibited under par.
15 (a) except as provided in this subsection, or attempts to do so, shall be fined not more
16 than \$10,000 or imprisoned not more than 9 months or both.

17 **(12) ACTION TO ENFORCE OBLIGATION SECURED BY MORTGAGE.** (a) In this
18 subsection, “obligation” means an obligation of a service member in active state
19 service that was incurred before the service member’s period of active state service
20 began and that is secured by a mortgage, deed of trust, or other security in the nature
21 of a mortgage on real or personal property that is owned by the service member.

22 (b) If a court action against a service member is commenced during the service
23 member’s period of active state service to enforce an obligation for nonpayment of
24 any sum due or for any other breach of terms occurring before or during the service
25 member’s period of active state service, the court shall hold a hearing on the matter.

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1 Unless the court determines that the service member's ability to comply with the
2 terms of the obligation is not materially affected by reason of his or her active state
3 service, the court on its own motion may, or upon application of the service member
4 or another person on his or her behalf shall, do any of the following:

5 1. Stay the action as provided in this section.

6 2. Make such other disposition of the case as the court determines is equitable
7 to the interests of all parties.

8 (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and
9 846.103 for sales of real property, no foreclosure, sale, or seizure of property for
10 nonpayment of any sum due or for any other breach of terms is valid if it occurs
11 during or within 3 months after the service member's period of active state service,
12 unless the court ordered the foreclosure, sale, or seizure of property before the
13 beginning of the service member's period of active state service and approves the
14 foreclosure, sale, or seizure after it occurs.

15 2. Any person who knowingly causes a foreclosure, sale, or seizure of property
16 that is invalid under subd. 1. shall be fined not more than \$10,000 or imprisoned for
17 not more than 9 months or both.

18 **(13) PERSONAL PROPERTY CONTRACTS.** When an action to resume possession of
19 personal property, or to rescind or terminate a contract for the purchase of personal
20 property, has been stayed under this section, the court may appoint 3 disinterested
21 persons to appraise the property. Based upon the report of the appraisers, and unless
22 undue hardship would result to the dependents of the service member in active state
23 service, the court may order that a sum be paid to the service member as a condition
24 of resuming possession of the property or rescinding or terminating the contract.

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1 **(14) TERMINATION OF LEASES BY LESSEES.** (a) This subsection applies to a lease
2 to which all of the following apply:

3 1. The lease was executed by or on behalf of a service member who entered
4 active state service after the lease was executed.

5 2. The lease covers premises that are occupied for dwelling, professional,
6 business, agricultural, or similar purposes by the service member, or the service
7 member and his or her dependents.

8 (b) A lease to which this subsection applies may be terminated by the service
9 member at any time after the beginning of the service member's period of active state
10 service by giving notice in writing by personal delivery or first class mail to the
11 landlord or the person who has been receiving rent or managing the property as the
12 landlord's agent.

13 (c) If the lease provides for monthly payment of rent, termination shall be
14 effective 30 days after the first date on which the next rental payment is due and
15 payable after the date on which the notice is delivered or mailed. In any other case,
16 all of the following apply:

17 1. Termination shall be effective on the last day of the month after the month
18 in which the notice was delivered or mailed.

19 2. Any unpaid rent for the period preceding termination shall be computed on
20 a prorated basis.

21 3. The landlord or the landlord's agent shall refund to the service member any
22 rent paid in advance that applies to the period after termination.

23 (d) Upon application of a landlord after receiving notice under this subsection
24 and before the lease termination date provided for in this subsection, a court may

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1 make such modifications to or restrictions on the relief granted in this subsection as
2 the court determines are appropriate under the circumstances.

3 (e) No person may knowingly seize or retain personal property belonging to a
4 service member who lawfully terminates a lease under this subsection, or in any
5 manner interfere with the removal of the service member's personal property from
6 the premises covered by the lease, for the purpose of subjecting the personal property
7 to a claim for rent accruing after the termination of the lease. Any person who
8 violates this paragraph shall be fined not more than \$10,000 or imprisoned for not
9 more than 9 months or both.

10 (f) Section 704.29 does not apply to the termination of a lease as provided in this
11 subsection.

12 **(15) STORAGE LIENS.** (a) Notwithstanding ss. 704.05 (5) and 704.90, no person
13 may enforce a lien for storage of any household goods, furniture, or personal effects
14 of a service member during the period in which the service member is in military
15 service and for 90 days after the member's completion of military service, except as
16 permitted by a court order under par. (b).

17 (b) No person may exercise any right to foreclose or enforce a lien for the storage
18 of household goods, furniture, or personal effects of a service member during the
19 service member's period of active state service and for 3 months after that period
20 ends except upon an order of the court. In an action under this paragraph, the court,
21 after a hearing, may on its own motion, and shall, on application of the service
22 member or some person acting on behalf of the service member, stay the proceeding
23 or make such other order as may be equitable to conserve the interests of all parties,
24 unless the court determines that the ability of the service member to pay storage
25 charges due is not materially affected by his or her active state service.

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1 (c) Any person who violates par. (a) may be fined not more than \$10,000 or
2 imprisoned for not more than 9 months or both.

3 **(16) DEPENDENT BENEFITS.** Upon application to the court, a dependent of a
4 service member is entitled to the same benefits given to a service member while in
5 active state service, unless the court determines that the ability of the dependent to
6 comply with the terms of an obligation, contract, lease, or bailment is not materially
7 impaired by reason of the service member's active state service.

8 **(17) TRANSFERS OR ACQUISITIONS.** If a court determines that any interest,
9 property, or contract has been transferred or acquired with the intent to delay the
10 enforcement of a civil right by taking advantage of this section, the court shall enter
11 any judgment or make any order that is just, notwithstanding the provisions of this
12 section.

13 **(18) CERTIFICATE OF SERVICE; PERSON REPORTED MISSING.** (a) In any action or
14 proceeding under this section, a certificate signed by the adjutant general or a person
15 designated by the adjutant general as to the period of active service of a service
16 member shall be prima facie evidence as to any of the following facts:

- 17 1. That the service member named has been in active state service.
- 18 2. The period of the active state service, including the date the service member
19 was ordered into active state service.
- 20 3. The monthly pay received by the service member in active state service at
21 the time the certificate was issued.
- 22 4. If the service member died while in active state service, the date and the
23 place where he or she died.

24 (b) The adjutant general shall provide the certificate under par. (a) upon
25 request of the service member or of a person acting on behalf of the service member

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1 or his or her estate, and any certificate so provided shall be prima facie evidence of
2 the facts stated in the certificate and of the authority of the signer to issue the
3 certificate.

4 (c) When a service member in active state service has been reported missing
5 to the department, the service member shall be presumed to continue in active state
6 service until accounted for, and no period limited under this section which begins or
7 ends with the death of a service member shall begin or end until the death of the
8 service member is determined by the department or by a court.

9 **(19) INTERLOCUTORY ORDERS.** A court may revoke, modify, or extend any
10 interlocutory order made by the court under this section, upon the court's own motion
11 or on the motion of a party, upon such notice to the parties as the court may require.

12 **(20) STAY OF ENFORCEMENT OF OBLIGATIONS OR LIABILITIES.** (a) A service member
13 may, at any time during his or her period of active state service, or within 6 months
14 after that service ends, apply to a court for relief with respect to any obligation or
15 liability incurred by the service member before his or her period of active state
16 service. The court, after appropriate notice and hearing, may grant the following
17 relief unless the court determines that the ability of the service member to comply
18 with the terms of the obligation or liability has not been materially affected by his
19 or her state active service:

20 1. In the case of an obligation payable in installments under a contract for the
21 purchase of real estate, or secured by a mortgage upon real estate, a stay of the
22 enforcement of the obligation during the period of active state service and, from the
23 date of the end of the period of active state service or from the date of requesting the
24 relief if made after the service is ended, for a period equal to the period of the
25 remaining life of the installment contract or instrument evidencing the obligation

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1 plus a period of time equal to the period of active state service, or any part of that
2 combined period. The court may issue a stay under this paragraph if the service
3 member makes payments of the balance of the principal and accumulated interest
4 due and unpaid at the date of the end of the period of active state service or from the
5 date of requesting the relief, whichever is appropriate, in equal installments during
6 the combined period and at the rate of interest as is prescribed in the contract or
7 instrument evidencing the obligation for installments paid when due. The court may
8 order other terms under this paragraph as are just.

9 2. In the case of any other obligation or liability, a stay of the enforcement of
10 that obligation or liability during the service member's period of active state service
11 and, from the date of the end of the period of active state service or from the date of
12 requesting the relief if made after the service is ended, for a period equal to the period
13 of active state service or any part of that period. The court may issue a stay under
14 this paragraph if the service member makes payments of the balance of the principal
15 and accumulated interest due and unpaid at the date of the end of the period of active
16 state service or from the date of requesting the relief, whichever is appropriate, in
17 equal installments during the extended period and at the rate of interest as is
18 prescribed for the obligation or liability when due. The court may order other terms
19 under this paragraph as are just.

20 (b) When a court has granted a stay under this subsection, no penalty may
21 accrue during the period that the terms and conditions of the stay are complied with
22 by reason of the failure to comply with the terms or conditions of the obligation or
23 liability in respect to which the stay was granted.

24 **(21) POWER OF ATTORNEY EXTENSION FOR MISSING SERVICE MEMBER.** (a) A power
25 of attorney that was duly executed by a service member that is reported missing to

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1 the department and that designates the service member's spouse, parent or named
2 relative as his or her attorney-in-fact for specified, or all, purposes, and that expires
3 after the service member is reported missing, is extended for the period that the
4 service member is missing.

5 (b) No power of attorney executed after the effective date of this subsection ...
6 [revisor inserts date], by a service member in active state service may be extended
7 under par. (a) if the document creating the power of attorney clearly indicates that
8 the power granted expires on the date specified even if the service member, after the
9 date of execution of the document, is reported missing to the department.

10 **(22) PROFESSIONAL LIABILITY PROTECTION.** (a) 1. If a service member who is called
11 into active state service has coverage under a professional liability insurance policy
12 that does not cover claims filed with respect to the service member during the period
13 of active state service unless the premiums are paid for the coverage for that period,
14 the insurer that provides the coverage shall suspend the service member's coverage
15 under the policy upon receipt of a written request from the service member to do so.
16 The insurer may not require that premiums be paid for the suspended coverage. The
17 insurer shall refund any premium amount already paid for coverage of the service
18 member for the period after the coverage is suspended or shall, at the option of the
19 service member, apply such amount to payment of any premium that becomes due
20 upon reinstatement of the coverage.

21 2. Subdivision 1. does not require the suspension of coverage for any other
22 person who has coverage under the policy and who is not a service member called into
23 active state service or relieve any person of the obligation to pay premiums for
24 coverage that is not required to be suspended under subd. 1.

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1 (b) 1. Subject to subd. 2., an insurer that suspends coverage under par. (a) is
2 not liable with respect to any claim that is based on the professional conduct,
3 including the failure to take an action in a professional capacity, of the service
4 member that occurs while the service member's professional liability coverage is
5 suspended under this subsection.

6 2. For purposes of subd. 1., a claim that is based on the failure of a professional
7 to make adequate provision for the care of patients during the professional's period
8 of active state service shall be considered to be based on an action or the failure to
9 take action before the beginning of the period during which coverage is suspended
10 under this subsection, unless professional services were provided after the date on
11 which the suspension of coverage began.

12 (c) 1. If a service member whose professional liability insurance coverage is
13 suspended under par. (a) transmits to the insurer, within 30 days after the date on
14 which the service member is released from active state service, a written request for
15 reinstatement of his or her professional liability insurance coverage, the insurer
16 must reinstate the coverage as of the date on which the insurer receives the written
17 request. The period for which the coverage must be reinstated may not be less than
18 the balance of the period for which the coverage would have continued under the
19 policy had the coverage not been suspended.

20 2. Upon receipt of the written request under subd. 1., the insurer shall notify
21 the service member of the due date for paying the premium for the insurance, and
22 the service member shall pay the premium within 30 days after receiving the notice.
23 For the minimum period of reinstatement required under subd. 1., the insurer may
24 not increase the amount of the premium over the amount that was chargeable before
25 the suspension of the coverage for that period, except to the extent of any general

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1 increase in premiums charged by the insurer for the same professional liability
2 coverage for persons similarly covered by such insurance during the period of the
3 suspension.

4 (d) 1. Any action or proceeding in any court or before any public agency, as
5 defined in s. 36.54 (2) (a) 2., based on the alleged professional negligence or other
6 professional liability of a service member whose professional liability insurance
7 coverage has been suspended under par. (a) shall be stayed until the end of the period
8 of suspension if all of the following apply:

9 a. The action or proceeding was commenced during the period of suspension.

10 b. The action or proceeding is based on an act or omission that occurred before
11 the date on which the period of suspension began.

12 c. The professional liability insurance policy would, except for the suspension,
13 on its face cover the alleged professional negligence or other professional liability of
14 the service member.

15 2. Whenever an action or proceeding is stayed under subd. 1., the action or
16 proceeding shall be considered to have been filed on the date on which the service
17 member's coverage is reinstated under par. (c) 1.

18 3. In any action or proceeding in which a stay may be granted under subd. 1.,
19 the period during which the professional liability insurance coverage is suspended
20 may not be included in computing any limitations period for commencing the action
21 or proceeding.

22 (e) If a service member whose professional liability insurance coverage is
23 suspended under par. (a) dies during the period of suspension, all of the following
24 apply:

